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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

COMMUNITY ASSOCIATION FOR  
RESTORATION OF THE  
ENVIRONMENT, INC., a Washington  
Non-Profit Corporation

*and*

CENTER FOR FOOD SAFETY, INC.,  
a Washington, D.C. Non-Profit  
Corporation,

Plaintiffs,

v.

COW PALACE, LLC, a Washington  
Limited Liability Company, THE  
DOLSEN COMPANIES, a Washington  
Corporation, and THREE D  
PROPERTIES, LLC, a Washington  
Limited Liability Company,

Defendants.

Case No. CV-13-3016-TOR

THIRD AMENDED COMPLAINT

**THIRD AMENDED COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

**INTRODUCTION**

1. This is a citizen suit for declaratory and injunctive relief against Cow Palace, LLC, The Dolsen Companies, and Three D Properties, LLC, (hereinafter, “Defendants”) for violations of the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”), at two dairy facilities, Cow Palace I and Cow Palace II, collectively referred to as “Cow Palace Dairy.”

2. This civil action is brought pursuant to the citizen suit provisions of RCRA, 42 U.S.C. § 6972(a)(1) (A) and (B).

3. As detailed below, Plaintiffs allege that Defendants have violated and continue to violate Section 7002(a) of RCRA by their contribution to the past or present handling, storage, treatment, transportation, and/or disposal of solid or hazardous waste at Cow Palace Dairy in such a manner that may present an imminent and substantial endangerment to health or the environment. 42 U.S.C. § 6972(a).

4. Plaintiffs further allege that the Defendants employ or allow improper manure management practices at Cow Palace Dairy, including storage or disposal of manure at non-agronomic levels on land owned or previously owned by

1 Defendants, which practices constitute “open dumping” of solid waste in violation  
2 of Section 4005(a) of RCRA. 42 U.S.C. § 6945(a).

3 5. Plaintiffs seek declaratory relief establishing that Defendants have violated  
4 RCRA. Plaintiffs also seek injunctive relief directing Defendants to modify the  
5 handling, storage, treatment, transportation, and disposal of solid and hazardous  
6 waste at Cow Palace Dairy such that these practices no longer present an imminent  
7 and substantial endangerment to health and the environment. Additionally,  
8 Plaintiffs seek injunctive relief obligating Defendants to remediate the  
9 environmental contamination they have caused and/or contributed to at or near  
10 Cow Palace Dairy, including widespread soil and groundwater contamination.  
11 Finally, Plaintiffs request that the Court award Plaintiffs reasonable attorneys and  
12 expert witness fees and costs incurred in bringing this action.

### 13 JURISDICTION

14 6. This Court has subject matter jurisdiction over this lawsuit pursuant to  
15 Section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

16 7. The Court also has federal question jurisdiction pursuant to 28 U.S.C. §  
17 1331 because this action arises under RCRA and the Declaratory Judgment Act, 28  
18 U.S.C. § 2201, *et seq.*

19 8. On October 17, 2012, Plaintiffs gave notice of the violations and their intent  
20 to file suit to the Defendant Cow Palace, LLC, Defendant’s registered agent,

1 United States Attorney General, United States Environmental Protection Agency  
2 (EPA), EPA Region X, Washington State Office of the Governor, Washington  
3 State Office of the Attorney General, and Washington State Department of  
4 Ecology as required by Section 7002(a) of RCRA, 42 U.S.C. § 6972(a).

5 9. On July 3, 2013, Plaintiffs gave supplemental notice of the violations and  
6 their intent to file suit to the Defendant Cow Palace, LLC, Defendant's registered  
7 agent, the United States Attorney General, United States Environmental Protection  
8 Agency (EPA), EPA Region X, Washington State Office of the Governor,  
9 Washington State Office of the Attorney General, and Washington State  
10 Department of Ecology as required by Section 7002(a) of RCRA, 42 U.S.C. §  
11 6972(a).

12 10. On April 17, 2014, Plaintiffs gave notice of violations and their intent to file  
13 suit to The Dolsen Companies and Three D Properties, LLC, their registered  
14 agents, the United States Environmental Protection Agency, (EPA), EPA Region  
15 X, and Washington State Department of Ecology as required by Section 7002(a) of  
16 RCRA, 42 U.S.C. § 6972(a).

17 11. More than ninety days have passed since these notices, including the April  
18 17, 2014 notice to The Dolsen Companies and Three D Properties, LLC, were  
19 served, and the violations complained of in the notices are continuing at this time,  
20 or Defendants are reasonably likely to continue to remain in violation of RCRA.

1 Neither the EPA nor the State of Washington has commenced or is diligently  
2 prosecuting a civil or criminal action to redress the violations. Any administrative  
3 action undertaken by EPA does not address the relief requested by Plaintiffs that is  
4 necessary to abate the imminent and substantial endangerment caused by  
5 Defendants' practices.

#### 6 VENUE

7 12. Venue properly vests in this Court pursuant to Section 7002(a) of RCRA, 42  
8 U.S.C. § 6972(a), because the alleged violations of the aforementioned statutes  
9 occurred and continue to occur within the Eastern District of Washington.

#### 10 PARTIES

11 13. Upon information and belief, Cow Palace, LLC is a Washington limited  
12 liability company with one member, The Dolsen Companies, that, in part, owns  
13 and operates the dairies Cow Palace I and Cow Palace II (collectively "Cow Palace  
14 Dairy"). Cow Palace I and II share common manure and other waste management  
15 practices. The Cow Palace Dairy is located at or near 1631 North Liberty Road,  
16 Granger, WA 98932.

17 14. Upon information and belief, the Cow Palace Dairy is jointly owned,  
18 operated, and/or controlled by Cow Palace, LLC, The Dolsen Companies and  
19 Three D Properties, LLC.

20 15. Upon information and belief, Three D Properties, LLC, is a Washington

1 limited liability company that owned or owns all or a part of the following parcels  
2 of real property located at or near the Cow Palace Dairy, some of all of which are  
3 utilized by the Dairy (parcels identified by Yakima County Assessor's parcel  
4 number): 211000-11419, 211001-11414, 211001-11415, 211001-11416, 211001-  
5 11421, 211001-11422, 211125-42004, 211126-41001, 211136-12001, 211136-  
6 21001, 211136-31001, 211136-34001, 211136-41001, 211136-43401, 211136-  
7 43404, 211136-44002, 211136-44005.

8 16. Upon information and belief, Three D Properties, LLC acquired parcels of  
9 real property on or about November 7, 2013, after the current litigation began.

10 17. Upon information and belief, The Dolsen Companies is a Washington  
11 corporation and the sole member of Cow Palace, LLC. Until approximately  
12 November 7, 2013, The Dolsen Companies owned certain parcels of real property  
13 that were utilized and may be utilized by the Cow Palace Dairy.

14 18. Upon information and belief, The Dolsen Companies transferred its  
15 ownership interest in a number of parcels of real property to Cow Palace, LLC, on  
16 or about November 7, 2013, after the current litigation began, including, but not  
17 limited to, the following parcels of real property located at or near the Cow Palace  
18 Dairy (identified by Yakima County Assessor's parcel number): 211000-11419,  
19 211001-11401, 211001-11404, 211001-11405, 211001-11411, 211001-11413,  
20 211001-11414, 211001-11415, 211001-11416, 211001-11420, 211001-11421,

1 211001-11422, 211001-11423, 211125-24002, 211125-31001, 211125-32001,  
2 211125-33001, 211125-42004, 211125-43403, 211125-43404, 211126-41001,  
3 211136-11002, 211136-12001, 211136-14001, 211136-21001, 211136-31001,  
4 211136-34001, 211136-41001, 211136-43401, 211136-43404, 211136-44002,  
5 211136-44003, 211136-44005, and portions of Tract 29 of Zillah Heights Orchard  
6 Tracts.

7 19. Cow Palace, LLC is a “person” within the meaning of Section 1004(15) of  
8 RCRA, 42 U.S.C. § 6903(15).

9 20. The Dolsen Companies is a “person” within the meaning of Section  
10 1004(15) of RCRA, 42 U.S.C. § 6903(15).

11 21. Three D Properties, LLC is a “person” within the meaning of Section  
12 1004(15) of RCRA, 42 U.S.C. § 6903(15).

13 22. Plaintiff CARE is a non-profit corporation organized under the laws of the  
14 State of Washington. CARE’s principal office is located in Outlook, Washington.

15 23. CARE is a grassroots organization composed of concerned community  
16 members. Its mission is to inform Washington state residents about activities that  
17 endanger the health, welfare, and quality of life for current and future  
18 Washingtonians through education and citizen empowerment. CARE also acts as  
19 an advocate to protect and restore the economic, social, and environmental  
20 resources of the region. In carrying out its mission, CARE has appeared in

1 numerous local, state, and federal proceedings.

2 24. CARE's organizational purposes are adversely affected by Cow Palace  
3 Dairy's violations of RCRA. These violations have caused significant  
4 environmental contamination of the soil and groundwater. Furthermore, but for  
5 Cow Palace Dairy's unlawful actions, CARE would not have to spend as much of  
6 its resources on the environmental problems created by illegal discharges from  
7 individual large-scale industrial farming operations, and could direct these  
8 resources to other priorities.

9 25. CARE has individual members that reside in Yakima County and in  
10 proximity to the Cow Palace Dairy. The environmental, health, aesthetic,  
11 economic, and recreational interests of CARE's members have been and will  
12 continue to be adversely affected by Cow Palace Dairy's violations of RCRA. For  
13 instance:

- 14 a. Members of CARE obtain their drinking water from aquifers that have  
15 been contaminated with nitrates, phosphorus, and other pollutants,  
16 including hormones and antibiotics, by Cow Palace Dairy's improper  
17 handling, storage, treatment, transportation, and disposal of solid and  
18 hazardous waste. As a result, drinking water that CARE's members  
19 rely upon has been rendered unsafe for human consumption.

20 Consequently, CARE's members have been forced to obtain, or



1 should be obtaining but may not be able to afford, alternative sources  
2 of drinking water. CARE's members are concerned that consuming  
3 this water is harming or could harm them and their families' health, as  
4 well as other community members' health.

5 b. Members of CARE also make domestic and agricultural use of  
6 groundwater that has been contaminated with nitrates, phosphorus,  
7 and other pollutants as a result of Cow Palace Dairy's improper  
8 handling, storage, treatment, transportation, and disposal of solid and  
9 hazardous waste. As a result, water that CARE's members' rely upon  
10 has been rendered unsafe for domestic and agricultural use.

11 Consequently, CARE's members have been forced to obtain, or  
12 should be obtaining but may not be able to afford, alternative sources  
13 of water for these uses. CARE's members are concerned that the  
14 water used in their homes is harming them and their families' health.  
15 CARE's members are concerned that the food they produce and rely  
16 upon for sustenance using this water is not safe to consume.

17 c. Members of CARE also live, work, and recreate in the environment  
18 that has been negatively impacted by Cow Palace Dairy's improper  
19 handling, storage, treatment, transportation, and disposal of solid and  
20 hazardous waste. This has lessened CARE's members' enjoyment of

1           their environment. CARE's members' are concerned that their  
2           environment has been irreparably injured by Cow Palace Dairy's  
3           improper practices.

4   26.   Plaintiff Center for Food Safety (CFS) is a public interest, non-profit,  
5   membership organization that works to protect human health and the environment  
6   by curbing the proliferation of harmful food production technologies and by  
7   promoting organic and other forms of sustainable agriculture. CFS's  
8   organizational purposes are adversely affected by Cow Palace Dairy's violations of  
9   RCRA. These violations have caused significant environmental contamination of  
10   the soil and groundwater. Furthermore, but for Cow Palace Dairy's unlawful  
11   actions, CFS would not have to spend as much of its resources on the problems  
12   created by illegal discharges from individual large-scale industrial farming  
13   operations, and could direct these resources to other priorities.

14   27.   CFS represents nearly 500,000 members throughout the country that support  
15   safe, sustainable and organic agriculture and regularly purchase organic products.  
16   CFS has nearly 20,000 members in the state of Washington. CFS members live,  
17   work, recreate, and grow food in, and consume food and water from, the Yakima  
18   Valley. The environmental, health, aesthetic, economic, and recreational interests  
19   of CFS's members have been and will continue to be adversely affected by Cow  
20   Palace Dairy's violations of RCRA. CFS members support the public's right to

1 choose food and crops not sourced from or by industrial farming practices, such as  
2 CAFOs. CFS's members are impacted by CAFOs through destructive discharges  
3 of CAFO pollution into groundwater, air and public waterways, which affects the  
4 suitability of drinking water and fish in these waterways for consumption.

5 28. At all relevant times, Plaintiffs were and are "persons" within the meaning  
6 of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

7 **STATUTORY AND REGULATORY FRAMEWORK**

8 29. Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), provides that  
9 citizens may commence a citizen suit against "any person," "including any past or  
10 present generator, past or present transporter, or past or present owner or operator  
11 of a treatment, storage, or disposal facility who has contributed or who is  
12 contributing to the past or present handling, storage, treatment, transportation, or  
13 disposal of any solid or hazardous waste which may present an imminent and  
14 substantial endangerment to health or the environment."

15 30. Section 1002(b) of RCRA states that "disposal of solid waste... in or on the  
16 land without careful planning and management can present a danger to human  
17 health and the environment;" and that "open dumping is particularly harmful to  
18 health, contaminates drinking water from underground and surface supplies, and  
19 pollutes the air and the land...." 42 U.S.C. § 6901(b).

20 31. As required by statute, EPA has promulgated criteria under RCRA §

1 6907(a)(3) defining solid waste management practices that constitute open  
2 dumping. *See* 42 U.S.C. § 6944(a); 40 C.F.R. Parts 257 and 258. These  
3 regulations outline certain solid waste disposal practices which, if violated, pose a  
4 reasonable probability of adverse effects on health or the environment. 40 C.F.R. §  
5 257.3.

6 32. The purpose of RCRA is “to promote the protection of health and the  
7 environment[.]” RCRA seeks to accomplish this by “prohibiting future open  
8 dumping on the land and requiring the conversion of existing open dumps to  
9 facilities which do not pose a danger to the environment or to health....” 42 U.S.C.  
10 § 6902(a).

11 33. Section 4005(a) of RCRA prohibits “any solid waste management practice  
12 or disposal of solid waste... which constitutes the open dumping of solid waste....”  
13 42 U.S.C. § 6945(a).

14 34. Under section 1004(3), “[t]he term ‘disposal’ means the discharge, deposit,  
15 injection, dumping, spilling, leaking, or placing of any solid waste... into or on any  
16 land or water so that such solid waste or hazardous waste or any constituent thereof  
17 may enter the environment or be emitted into the air or discharged into any waters,  
18 including ground-waters.” 42 U.S.C. § 6903(3).

19 35. RCRA defines “solid waste” as “any garbage, refuse, sludge from a waste  
20 treatment plant... and other discarded material, including solid, liquid, semisolid,

1 or contained gaseous material resulting from... *agricultural operations*....” 42

2 U.S.C. § 6903(27) (emphasis added).

3 36. EPA criteria for solid waste disposal practices prohibit the contamination of  
4 any underground drinking water source beyond the solid waste boundary of a  
5 disposal site. 40 C.F.R. § 257.3-4(a).

6 37. An “underground drinking water source” includes (1) an aquifer supplying  
7 drinking water for human consumption or (2) any aquifer in which the ground-  
8 water contains less than 10,000 milligrams per liter of total dissolved solids. 40  
9 C.F.R. § 257.3-4(c)(4).

10 38. “Contaminate” an underground drinking water source means to cause the  
11 groundwater concentration of a listed substance to exceed its corresponding  
12 maximum contaminant level specified in Appendix I to 40 C.F.R. Part 257, or  
13 cause an increase in the concentration of that substance where the existing  
14 concentration already exceeds the maximum contaminant level in Appendix I.

15 **FACTS**

16 39. Cow Palace Dairy was founded by Robert and R. William Dolsen and  
17 commenced operations in 1972. Dolsen family members own The Dolsen  
18 Companies, a Washington corporation. The Dolsen Companies is the only  
19 member of Cow Palace, LLC. Cow Palace Dairy is presently managed by Jeff  
20 Boivin.

1 40. Cow Palace Dairy is a large dairy CAFO under federal and state law. 40  
2 C.F.R. § 412.2; WAC 173-224-030.

3 41. As of January 19, 2011, Cow Palace Dairy has over 6840 milking cows and  
4 between 700-1699 dry cows, 300-999 heifers, and 2000-2999 calves housed at the  
5 facility. In total, Cow Palace Dairy had a herd size of at least 9,840 animals as of  
6 January, 2011. These animals are confined 365 days per year.

7 42. Despite due diligence on the Plaintiffs' part to obtain these documents, Cow  
8 Palace Dairy's Nutrient Management Plan ("DNMP") and related documents have  
9 either not been provided or been partially redacted by various Washington State  
10 agencies, thereby preventing citizens from having access to information critical to  
11 determining the adequacy of the DNMP itself.

12 43. Upon information and belief, there are two main aquifers underlying Cow  
13 Palace Dairy and the surrounding area. These aquifers include a surficial  
14 unconfined to semi-confined alluvial aquifer and an extensive basalt aquifer of  
15 great thickness underlying sedimentary deposits. Groundwater flows through the  
16 surficial aquifer in a manner that generally follows surface topography.  
17 Groundwater flows through the upper portions of the underlying basalt aquifer also  
18 generally follow surface topography.

19 44. Plaintiffs' members obtain groundwater from one or both of these aquifers.

20 45. The manure generated at Cow Palace Dairy contains numerous organic and

1 inorganic compounds, including phosphorus, veterinary pharmaceuticals,  
2 hormones, pathogens (including bacteria, viruses, and protozoa), and steroids.  
3 These contaminants are hereinafter collectively referred to as “Other  
4 Contaminants.” A list of the possible contaminants is located in Plaintiffs’ July 3,  
5 2013 protective supplemental notice of intent to sue, incorporated by reference  
6 herein. Attachment 2, pp. 2-3 & pp. 5-6.

### 7 *Manure Storage Practices*

8 46. Like all large dairy CAFOs, Cow Palace Dairy generates significant  
9 quantities of solid and liquid wastes, including manure wastes.

10 47. It is estimated that Cow Palace Dairy produces more than 188,570 tons of  
11 manure annually.

12 48. Cow Palace Dairy composts the solid manure wastes generated by its herd  
13 on-site. Composted manure is then used as bedding at the facility or sold off-site.

14 49. Solid manure that is not composted by Cow Palace Dairy is land-applied to  
15 agricultural fields.

16 50. Solid manure is stored and/or composted at Cow Palace Dairy on permeable  
17 surfaces.

18 51. Cow Palace Dairy stores the liquid manure wastes generated by its herd in  
19 one of at least nine manure storage lagoons. Wastes are held in these lagoons until  
20 such time they are applied to fields through various land-application techniques.

1 52. Cow Palace Dairy's nine manure storage lagoons are impoundments  
2 containing no synthetic liner or other artificial barrier.

3 53. These lagoons have an estimated holding capacity of approximately 40.8  
4 million gallons.

5 54. According to National Resource Conservation Service ("NRCS") standards,  
6 manure lagoons should not be constructed above an aquifer that serves as a  
7 domestic water supply. If no reasonable alternative exists, however, NRCS  
8 recommends that manure lagoons be built with either (1) a clay liner with a  
9 permeability less than  $1 \times 10^{-6}$  centimeters per second; (2) a flexible membrane  
10 liner over a clay liner; (3) a geosynthetic clay liner; or (4) a concrete liner designed  
11 in accordance with slab on grade criteria for fabricated structures requiring water  
12 tightness.

13 55. Cow Palace Dairy's manure lagoons are constructed above an aquifer that  
14 serves as a domestic water supply. Upon information and belief, Cow Palace  
15 Dairy's manure storage lagoons do not meet NRCS standards. Under any  
16 circumstances, Cow Palace Dairy's manure storage lagoons leak to groundwater.

17 56. The NRCS standards for manure lagoons are not designed to protect, nor are  
18 capable of protecting, human health or the environment. The standards are not  
19 scientifically established to protect groundwater.

20 57. Upon information and belief, the NRCS standards for municipal wastewater



1 treatment plant lagoons are more protective of groundwater than those for manure  
2 lagoons. Municipal lagoons are required to be lined with, at the very least,  
3 synthetic, geomembrane liners. This is true even though municipal waste has far  
4 less concentrated effluent than the effluent generated by dairies such as Cow  
5 Palace Dairy.

6 58. Upon information and belief, Cow Palace Dairy's nine manure storage  
7 lagoons are leaking at least 720,000 gallons of manure into groundwater per year,  
8 but potentially as high as 8,600,000 gallons, or more, per year.

9 59. Upon information and belief, seepage from the manure waste storage areas  
10 has been ongoing since the date these storage areas were brought into operation,  
11 some more than 20 years ago, and has been continuous since put into operation.

12 60. The seepage of manure waste from the lagoons has contributed and is  
13 contributing to the excessive contamination of the groundwater, which is posing, or  
14 may pose, an imminent and substantial endangerment to health or the environment.

15 61. Cow Palace Dairy's storage and/or composting of solid manure on  
16 permeable surfaces causes runoff and leachate from the solid manure to enter  
17 groundwater, further contributing to the contamination of the groundwater.

18 62. Cow Palace Dairy's storage of solid and/or liquid manure in lagoons and  
19 other permeable surfaces has caused and is continuing to cause the discharge of  
20 manure contaminated water into surface water and groundwater.

63. Manure that has been permitted to leach, leak, or otherwise discharge into groundwater, such as from a leaking lagoon, solid manure storage area, compost storage area, confinement pen, or other permeable surface, is a “discarded material” from an “agricultural operation,” and is therefore a “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

64. Defendants’ improper manure storage practices at Cow Palace Dairy have caused irreparable injury to the environment, contaminating soils, groundwater, and surface waters with excessively high levels of nitrates and related nitrogen compounds and, possibly, Other Contaminants.

#### ***Manure Application Practices***

65. Upon information and belief, Cow Palace Dairy and/or its agents have applied, continue to apply, and are reasonably likely to continue to apply liquid and solid manure wastes to nearby agricultural fields in amounts that exceed agronomic rates.

66. The surface soils to which Cow Palace Dairy applies manure have a high saturated hydraulic conductivity.

67. The EPA has conducted a study entitled “Relation Between Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley, Washington,” EPA-910-R-12-003 (September 27, 2012). The purpose of that study was to investigate the contribution from various land uses to the high nitrate levels in groundwater and

1 residential drinking water wells, the predominant source of drinking water for  
2 many residents in the Lower Yakima Valley. Plaintiffs hereby incorporate by  
3 reference the content of the EPA study into this Complaint. The EPA study may  
4 be accessed at  
5 <[http://www.epa.gov/region10/pdf/sites/yakimagw/nitrate\\_in\\_water\\_wells\\_study\\_](http://www.epa.gov/region10/pdf/sites/yakimagw/nitrate_in_water_wells_study_9-27-2012.pdf)  
6 [9-27-2012.pdf](http://www.epa.gov/region10/pdf/sites/yakimagw/nitrate_in_water_wells_study_9-27-2012.pdf)>.

7 68. The EPA study found that within the approximate property boundary of the  
8 Cow Palace Dairy, six soil units have been mapped by the NRCS. All six soil  
9 units have a silt loam texture with a “well-drained” classification. Three of the soil  
10 units (Esquatzel, Shano, and Warden) represent approximately 81 percent of the  
11 surface area. These units have a saturated hydraulic conductivity in the range of  
12 1.1 to 4.0 feet per day, which is characterized as “moderately high to high” in their  
13 capacity to transmit water. Two of the soil units (Burke and Scoon) represent  
14 approximately 19 percent of the surface area and have a saturated hydraulic  
15 conductivity in the range of 0.0 to 0.12 feet per day, which is characterized as  
16 “very low to moderately low.” One of the soil units (Finlay) represents less than 1  
17 percent of the surface area and has a saturated hydraulic conductivity of 4 to 11.9  
18 feet per day, which is characterized as “high.”

19 69. The well drained nature of these soils along with high hydraulic conductivity  
20 make for highly susceptible soil conditions for groundwater contamination and

1 very low potential for any denitrification to decrease nitrate contamination of  
2 groundwater.

3 70. Dairy effluent concentrations of ammonia and nitrate can be considerable, as  
4 ammonia is produced by hydrolysis of waste fluids. Ammonia is rapidly converted  
5 to nitrate when the manure encounters aerobic soils or groundwater. Due to their  
6 high solubility, ammonia and nitrate can readily leach into groundwater. Other  
7 Contaminants may also bind to soil and leach through soils and into groundwater  
8 when manure is applied above agronomic rates.

9 71. Plants can uptake nitrate and nitrite only in limited quantities. Quantities of  
10 nitrate and nitrite in the soil in excess of concentrations which can be used by the  
11 currently active crop migrate into the vadose zone and the water table, where they  
12 adversely impact ground water quality and its use as a drinking water source.

13 Migration to the vadose zone and water table may also occur where well-drained  
14 soils cannot hold the nitrate and nitrite in the root zone for a sufficient amount of  
15 time to allow for the crops' natural uptake process.

16 72. Elevated nutrient levels found in soils receiving manure are evidence of  
17 manure applications in excess of agronomic rates.

18 73. Washington Department of Agriculture inspection reports from November  
19 22, 2005 documented elevated phosphorus levels in soils receiving Cow Palace  
20 Dairy manure, indicating that the Dairy had applied manure in excess of agronomic

1 rates. The report also cautioned the Dairy to “watch crop uptake rates” for nitrate,  
2 indicating that there were also elevated nitrate levels in fields receiving the Dairy’s  
3 manure.

4 74. Washington Department of Agriculture inspection reports from July 3, 2007  
5 have documented elevated nitrogen and phosphorus levels in soils receiving Cow  
6 Palace Dairy manure, indicating that the Dairy has applied manure in excess of  
7 agronomic rates.

8 75. Washington Department of Agriculture inspection reports from January 19,  
9 2011 have documented elevated phosphorus levels in soils receiving Cow Palace  
10 Dairy’s manure, indicating that the Dairy has applied manure in excess of  
11 agronomic rates.

12 76. Upon information and belief, Washington Department of Agriculture  
13 inspection reports from 2012 have documented elevated nitrate levels in soils  
14 receiving Cow Palace Dairy’s manure, indicating that the Dairy has applied  
15 manure in excess of agronomic rates.

16 77. Upon information and belief, the elevated nutrients found in Cow Palace  
17 Dairy’s fields are evidence of applications of manure in excess of agronomic rates.

18 78. According to Washington Department of Ecology records, Cow Palace  
19 Dairy was applying manure to a field on the NW corner of N Arms Road and  
20 Knowles Road on or about January 2, 2013. At the time, the field to which Cow

1 Palace Dairy was applying manure was frozen and/or snow covered. According to  
2 an unidentified eyewitness of the application, manure had been applied in such  
3 quantities so as to create a “lake” of ponded manure.

4 79. According to Washington Department of Ecology records, inspectors did not  
5 visit Cow Palace Dairy until nearly one month later, on February 3, 2013. At that  
6 time, Cow Palace Dairy was still applying manure to fields that were frozen and/or  
7 snow covered.

8 80. According to records obtained from the Washington Department of  
9 Agriculture, on or about April 9, 2009, Greg Schuler, a former dairy inspector,  
10 filed a complaint alleging that Cow Palace Dairy was applying manure through a  
11 “big gun” to “Field #4A” in such quantities that the ponding of manure occurred.  
12 Field #4A is between 26-65 acres in size. The ponded area was approximately 10-  
13 20 feet wide and at least 12 inches deep.

14 81. According to a Washington Department of Agriculture Inspection Report  
15 from January 5, 2006, Cow Palace Dairy had been applying manure to “fields 1  
16 and 2,” in such quantities that there was ponding in a low spot of a field adjacent to  
17 the Dairy. The Report indicates that the ponding and size of application caused  
18 runoff from the fields to occur.

19 82. Upon information and belief, Cow Palace Dairy’s DNMP prohibits  
20 applications on frozen and/or snow covered fields.

1 83. Applications of manure to frozen and/or snow covered fields creates  
2 pathways for manure to be discharged to surface and/or groundwater.

3 84. Applications of manure to frozen and/or snow covered fields are not  
4 agronomic.

5 85. Upon information and belief, Cow Palace Dairy's DNMP prohibits  
6 applications when there is a potential for ponding to occur.

7 86. Applications of manure which cause ponding to occur create pathways for  
8 manure to be discharged to surface and/or groundwater.

9 87. Applications of manure which cause ponding to occur are not agronomic.

10 88. Applications of manure waste above agronomic rates cause manure  
11 nutrients, including but not limited to nitrates, to leach through soil and into  
12 groundwater.

13 89. Once nitrates enter the vadose zone, the area below the soil surface from the  
14 end of the vegetative root zone to the beginning of a groundwater table, they  
15 migrate down to the nearest groundwater. Other Contaminants, depending upon  
16 their responsive characteristics in soil, may also migrate down to the nearest  
17 groundwater.

18 90. Once nitrates and Other Contaminants enter the water table, they migrate  
19 away from the Cow Palace Dairy and into the wells of nearby residents or into  
20

1 nearby surface waters depending upon the depth and flow direction of the initial  
2 receiving groundwater.

3 91. The contaminated shallow groundwater that likely discharges to surface  
4 waters include discharges into the Roza-Sunnyside Board of Joint Control Drains  
5 26.6, 27.2 and 28.0 and the Sunnyside Canal. The Joint Drains converge and  
6 discharge into the Granger Drain, which in turn then discharges to the Yakima  
7 River. The Sunnyside Canal discharges into the Yakima River. These waters are  
8 used by members of CARE and CFS and the general public for multiple purposes,  
9 including but not limited to recreation, human consumption, irrigation, and  
10 sustenance.

11 92. Upon information and belief, the over-application of liquid manure above  
12 agronomic rates has been ongoing since the date Cow Palace Dairy was brought  
13 into operation and has been continuous for at least the past five years.

14 93. Defendants know or should know that applications of manure above  
15 agronomic rates – that is, applications above that which the current or planned crop  
16 can effectively utilize – will cause manure nutrients, including but not limited to  
17 nitrate and phosphorus, along with nutrients that comprise some of the Other  
18 Contaminants, to pass through soils before they can be utilized by the planned or  
19 active crop and into groundwater. This renders the manure incapable of serving its  
20 intended purpose as a fertilizer. The presence of Other Contaminants that are not



1 plant nutrients also indicate that discarded manure is the source of the groundwater  
2 contaminants.

3 94. Defendants know or should know that applications of manure to frozen  
4 and/or snow covered fields or applications of manure which result in ponding will  
5 cause manure nutrients, including but not limited to nitrate, phosphorus, and Other  
6 Contaminants to pass through soils before they can be utilized by the planned or  
7 active crop and into groundwater. This renders the manure incapable of serving its  
8 intended purpose as a fertilizer.

9 95. Manure that has been over-applied on fields and permitted to leach, leak, or  
10 otherwise discharge into groundwater is a “discarded material” from an  
11 “agricultural operation,” and is therefore a “solid waste” under Section 1004(27) of  
12 RCRA, 42 U.S.C. § 6903(27).

13 96. Manure that has been applied to frozen and/or snow covered fields, or  
14 manure that has been applied in such a manner that ponding occurs, causes manure  
15 to leach, leak, or otherwise discharge into groundwater. This renders the manure a  
16 “discarded material” from an “agricultural operation,” and is therefore a “solid  
17 waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

18 97. Washington State regulators have proposed that soil samples containing  
19 greater than 45 parts per million (ppm) nitrate constitute “excessive” levels of  
20 nitrate within soils.

1 98. The 45 ppm proposal used in drafting the 2006 Washington General CAFO  
2 National Pollution Discharge Elimination System (“NPDES”) Permit was the  
3 result of political machinations between the dairy and cattle industry and  
4 Washington regulators, including the Washington Departments of Ecology and  
5 Agriculture.

6 99. The 45 ppm soil number is not scientifically based to be protective of human  
7 health or the environment. Soil samples containing less than 45 ppm nitrate may  
8 still allow nitrates to leach through soils and into groundwater at levels above the  
9 10 mg/l federal Maximum Contaminant Level or “MCL.” A concentration of 45  
10 ppm nitrate in the upper two feet of soil would amount to 360 pounds of available  
11 nitrogen per acre. This amount of nitrogen is far in excess of the most demanding  
12 crop needs.

13 100. Accurately measuring quantities of nitrate in soil that can cause groundwater  
14 contamination requires more than simply measuring the amount of nitrate in soil at  
15 certain levels below the surface. Other factors, including but not limited to,  
16 moisture content, irrigation practices, and amount of nitrate contained in the soil  
17 solution must also be accounted for. Soil sample results (from below the root  
18 zone) that have greater than 10 mg/l nitrate contained in the soil solution are  
19 excessive and will likely cause groundwater contamination, which correspond to  
20 the metric of the MCL for nitrates, which is also 10 mg/l.

1 101. Defendants' improper manure application practices at Cow Palace Dairy  
2 have caused irreparable injury to the environment, contaminating soils and  
3 groundwater with excessively high levels of nitrates and other pollutants.

4 ***Contamination of Groundwater in Excess of MCLs***

5 102. The practices mentioned in paragraphs 39-94 are causing or contributing to  
6 groundwater contamination beyond the federal MCL for nitrates.

7 103. The EPA has determined that nitrates pose an acute health concern at certain  
8 levels of exposure. Nitrates contained in drinking water are colorless and odorless.  
9 Ingestion of nitrates, converted to nitrite in the body, interferes with the oxygen  
10 carrying capacity of blood, potentially resulting in cyanosis and, at higher levels,  
11 asphyxia.

12 104. High levels of nitrate in water can also cause a blood disorder in infants  
13 known as methemoglobinemia ("blue baby syndrome") that can be fatal if left  
14 untreated.

15 105. Methemoglobinemia is a blood disorder in which an abnormal amount of  
16 methemoglobin -- a form of hemoglobin -- is produced. Hemoglobin is the  
17 molecule in red blood cells that distributes oxygen to the body. Methemoglobin  
18 cannot release oxygen. In methemoglobinemia, the hemoglobin is unable to  
19 release oxygen effectively to body tissues.

1 106. High nitrate levels may also affect pregnant women and adults with  
2 hereditary cytochrome b5 reductase deficiency.

3 107. In addition, nitrate and nitrite ingestion in humans has been linked to  
4 goitrogenic (anti-thyroid) actions on the thyroid gland (similar to perchlorate),  
5 fatigue and reduced cognitive functioning due to chronic hypoxia, and maternal  
6 reproductive complications including spontaneous abortion.

7 108. Ingestion of nitrates in excess of the MCL is also suspected of causing  
8 various forms of cancer in the general exposed population, including a variety of  
9 carcinogenic outcomes deriving from N-nitrosamines formed via gastric nitrate  
10 conversion in the presence of amines, and compromises the health of immuno-  
11 compromised individuals and the elderly.

12 109. The MCLs are health-based standards that specify contaminants known to  
13 have an adverse effect on human health at levels beyond the parameters set forth  
14 by regulations.

15 110. The EPA has established that the MCL for nitrate in groundwater is 10  
16 milligrams per liter (mg/l) or 10 parts per million (ppm). Samples taken by the  
17 EPA as part of its study indicate elevated levels of nitrate, potassium, magnesium,  
18 calcium, sodium, chloride, sulfate, barium, zinc, and industry-standard bovine  
19 pharmaceuticals in nearby residential wells downgradient from the "Dairy  
20 Cluster," which includes Cow Palace Dairy.

111. The October 17, 2012 notice of intent to sue Cow Palace LLC, attached hereto as Attachment 1 and incorporated herein by reference, cited to the EPA study, which shows the specific location of the wells and other areas that were sampled at the Dairy Cluster sampling area, including areas on and near Cow Palace Dairy, as well as a summary of the results obtained for nitrate.

112. The July 3, 2013 protective supplemental notice of intent to sue, attached hereto as Attachment 2 and incorporated herein by reference, also cited to the EPA study. That study showed where wells in the Dairy Cluster area were contaminated with nitrates and Other Contaminants originating from Cow Palace Dairy and its manure, including phosphorus, trace and inorganic elements, a variety of veterinary pharmaceuticals, hormones, steroids, and organic compounds.

113. The April 17, 2014 notice of intent to sue to The Dolsen Companies and Three D Properties, LLC, attached hereto as Attachment 3 and incorporated herein by reference, also cited to the EPA study. The April 17 notice letter referenced, *inter alia*, sections of the study showing wells and other sampling locations on and near Cow Palace Dairy, and the sampling results for levels of nitrate and Other Contaminants found in wells and Cow Palace Dairy's manure.

114. Observed levels of nitrate in seven wells located downgradient of the Dairy Cluster, which includes Cow Palace Dairy (identified as WW-11 through WW-17), are all in excess of the 10 mg/l MCL and are as follows: Wells WW-11 through

1 WW-17 yielded results of 23 mg/l, 46.7 mg/l, 44 mg/l, 43.4 mg/l, 30.2 mg/l, 23.4  
2 mg/l, and 22.7 mg/l, respectively. *See* T. 20 in "Relation Between Nitrate in Water  
3 Wells and Potential Sources in the Lower Yakima Valley, Washington," EPA-910-  
4 R-12-003 (September 27, 2012).

5 115. The results exceed the MCL for nitrate, and in one instance by nearly 5  
6 times. *See* 40 C.F.R. Part 141 and Appendix I. The results were also substantially  
7 higher than the nitrate results obtained from WW-06, the sampled well located  
8 upgradient of Cow Palace Dairy, which had a reported value of 0.73 mg/l nitrate.  
9 These samples were taken between February and April, 2010.

10 116. EPA took additional groundwater samples on property adjacent to Cow  
11 Palace Dairy, both upgradient and downgradient, in December 2012. The results  
12 of that sampling revealed that wells located downgradient of Cow Palace Dairy  
13 had observed nitrate levels many times greater than the MCL. For instance,  
14 downgradient well DC-03 had a nitrate level of 190 mg/l, which is 19 times greater  
15 than the MCL. Results of 26 mg/l, 32 mg/l, and 26 mg/l nitrate were also observed  
16 in monitoring wells DC-04, DC-05, and DC-14, respectively, all of which exceed  
17 the MCL for nitrate. EPA's December, 2012 sampling information is hereby  
18 incorporated herein, and is attached hereto as Attachment 4.

1 117. Upon information and belief, Plaintiffs assert that Cow Palace Dairy refused  
2 entry to EPA to conduct sampling on the Dairy's property during the fall of 2012  
3 and winter of 2012-13.

4 118. On or about March 31, 2010, EPA sent Cow Palace Dairy a letter requesting  
5 access to the facility to collect soil and other environmental samples on the Dairy's  
6 property. The letter also requested Cow Palace Dairy to respond to a questionnaire  
7 about the Dairy's practices and management. Upon information and belief, Cow  
8 Palace Dairy refused access to EPA and did not respond to the questionnaire.

9 119. Upon information and belief, the highest levels of nitrates generally occur in  
10 the shallow alluvial aquifer. Plaintiffs' members and other residents have installed  
11 domestic wells for drinking water that intersect or utilize this shallow aquifer.

12 120. Defendants' storage and application of manure has caused nitrate  
13 contamination of these residential wells, forcing Plaintiffs' members and other  
14 residents to either consume unsafe drinking water or to obtain alternative sources  
15 of drinking water.

16 121. Defendants' manure storage and application practices at Cow Palace Dairy,  
17 described in the preceding paragraphs, have caused irreparable injury to the  
18 environment, contaminating groundwater with excessively high levels of nitrates  
19 and Other Contaminants.

20 **CLAIMS FOR RELIEF**

**COUNT I**  
**RCRA Imminent and Substantial Endangerment**

122. Plaintiffs incorporate by reference the allegations of the preceding paragraphs of this Complaint.

123. Since at least February 1, 2008, Defendants have been discarding and or disposing of manure, and pharmaceutical by-products in the manure, at Cow Palace Dairy, which wastes are “solid wastes” under section 1004 of RCRA, 42 U.S.C. § 6903(27), because the manure is, either when over-applied or leaked through holding areas, a discarded solid, liquid, and/or semisolid material resulting from an agricultural operation.

124. Defendants are the past and present owners or operators of all or portions of the Cow Palace Dairy--including storage or disposal facilities and/or land owned or previously owned by Defendants that Cow Palace Dairy utilizes for manure storage and disposal. As indicated above, manure is stored and disposed of on land owned or previously owned by Defendants and utilized by Cow Palace Dairy, and in massive earthen pits and other holding structures at the Cow Palace Dairy. As a result, Defendants contribute to the past or present handling, storage, and disposal of a solid waste. RCRA, 42 U.S.C. § 6972(a)(1)(B).

125. Defendants are past and present generators of manure and other by-product wastes, which manure is “handled” and “transported” by the Defendants, as well as



1 disposed of on land owned or leased or utilized by the Defendants. As a result,  
2 Defendants contribute to the past or present handling, transportation, or disposal of  
3 a solid waste. RCRA, 42 U.S.C. § 6972(a)(1)(B).

4 126. Defendants' handling, transportation, storage, and disposal of manure may  
5 present an imminent and substantial endangerment to public health and/or the  
6 environment.

7 127. Specifically, as alleged above, ground and surface water contamination  
8 levels on Defendants' land, and down-gradient and downstream from Defendants'  
9 land and facilities, have contamination levels that exceed the maximum safe  
10 consumption limits established under state and federal law, establishing a case of  
11 imminent and substantial endangerment to public health and/or the environment.

12 128. The National Primary Drinking Water Standards ("NPDWS") are  
13 established under the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300f, *et*  
14 *seq.* The NPDWS are health-based standards that specify contaminants known to  
15 have an adverse effect on the health of persons at levels beyond the parameters set  
16 forth in the regulations. 42 U.S.C. § 300f(1)(B).

17 129. The Washington Water Quality standards were promulgated to protect  
18 groundwater and human health pursuant to the Washington Water Pollution  
19 Control Act, RCW 90.48.

1 130. Promulgated pursuant to this statute, WAC 173-200-040(2)(a)  
2 provides: Groundwater concentrations shall not exceed the criteria listed in Table  
3 1, except as described in WAC 173-200-050 (3)(b). The ground-water protection  
4 standard for nitrate is the same as the federal MCL of 10 mg/l.

5 131. 40 C.F.R. § 257.3-4(a) prohibits a facility or practice from contaminating an  
6 underground drinking water source. “Contamination” occurs when a facility or  
7 practice introduces a toxic substance that causes the concentration of that substance  
8 in groundwater to exceed certain parameters listed in Appendix I to 40 C.F.R. §  
9 257.3-4(a).

10 132. The past and continuing practices of Defendants at the Cow Palace Dairy  
11 have contaminated and continue to contaminate groundwater and surface water to  
12 levels that exceed the maximum limits for safety established under state and  
13 federal law. These practices present an imminent and substantial endangerment to  
14 the environment and/or public health. Specifically, Cow Palace Dairy is polluting  
15 groundwater to the extent that it is hazardous to health and the environment and the  
16 shallow contaminated groundwater feeds nearby surface waters including, but not  
17 limited to, Roza-Sunnyside Board of Joint Control Drains 26.6, 27.2 and 28.0, the  
18 Sunnyside Canal, and the Granger Drain, which discharges into the Yakima River.

19 133. Pursuant to RCRA Section 7002, Defendants may be subject to an injunction  
20 under RCRA ordering them to cease and abate any past or present handling,

1 storage, treatment, and/or transportation of any solid waste or hazardous waste at  
2 Cow Palace Dairy that may present an imminent and substantial endangerment to  
3 public health and/or the environment.

4 134. Plaintiffs' interests are harmed and will continue to be harmed by this  
5 imminent and substantial endangerment and by Defendants' failure to abate the  
6 endangerment unless the Court grants the relief sought herein.

7 **COUNT II**  
8 **RCRA Illegal Open Dumping**

9 135. Plaintiffs incorporate by reference the allegations of the preceding  
10 paragraphs of this Complaint.

11 136. Cow Palace Dairy constitutes an "open dump" under RCRA Section  
12 1004(14). 42 U.S.C. § 6903(14).

13 137. Defendants' solid waste disposal practices cause groundwater concentration  
14 levels of nitrates and other pollutants to exceed the limits set forth in Appendix I to  
15 40 C.F.R. Part 257, which constitutes illegal open dumping, and is considered to  
16 pose a reasonable probability of causing adverse effects to health and the  
17 environment.

18 138. Defendants store and dispose of manure at Cow Palace Dairy, including on  
19 land owned or previously owned by Defendants that Defendants allow Cow Palace  
20 Dairy to utilize for such storage and disposal. The manure constitutes an

1 agricultural waste and a “solid waste” under section 1004 of RCRA because it is  
2 over applied and/or improperly stored, and therefore constitutes a “discarded  
3 material” under the statute. 42 U.S.C. § 6903(27).

4 139. Groundwater monitoring data indicates that the disposal of solid wastes at  
5 the Cow Palace Dairy, including the fields Cow Palace Dairy uses to apply  
6 manure, are causing the contamination of groundwater to exceed the limits set  
7 forth in Appendix I to 40 C.F.R. Part 257. Concentrations of nitrate, identified  
8 herein, have repeatedly exceeded the maximum contaminant levels, as documented  
9 by the EPA study. This practice constitutes illegal open dumping.

10 140. Groundwater monitoring data, including as documented by the EPA study,  
11 also indicates that the disposal of solid wastes at the Cow Palace Dairy, including  
12 the fields Cow Palace Dairy uses to apply manure, are causing Other Contaminants  
13 to contaminate groundwater. This practice is also indicative of illegal open  
14 dumping.

15 141. Solid waste disposal practices prohibit the contamination of any surface  
16 water source in violation of NPDES requirements or water quality standards. 40  
17 C.F.R. § 257.3-3(a). Cow Palace Dairy is operating without a NPDES permit.

18 142. Pursuant to Section 7002, 42 U.S.C. § 6972, Defendants may be subject to  
19 an injunction under RCRA ordering them to cease open dumping at Cow Palace  
20

1 Dairy and remediate the environmental contamination they have caused and/or  
2 contributed to, including widespread soil and groundwater contamination. *Id.*

3 143. Plaintiffs' interests are harmed and will continue to be harmed by  
4 Defendants' open dumping unless the Court grants the relief sought herein.

5 **RELIEF REQUESTED**

6 WHEREFORE, Plaintiffs CARE and CFS respectfully request that the Court enter  
7 a judgment:

8 A. Declaring that Defendants' contribution to the past and/or present  
9 generation, handling, storage, treatment, transportation, and/or disposal of solid  
10 waste presents, or may present, an imminent and substantial endangerment to  
11 public health or to the environment.

12 B. Declaring that Defendants' storage and disposal of manure and its  
13 incorporated by-products constitutes disposal and illegal open dumping.

14 C. Issuing a compliance order that requires Defendants to cease and desist from  
15 storing manure on any portion of Defendants' land that the Defendants has not first  
16 lined adequately with synthetic liners to prevent seepage of pollutants into surface  
17 water or groundwater that may, whether by flow or diffusion, transmit such  
18 pollutants outside Defendants' property boundaries.

19 D. Issuing a compliance order that requires Defendants to capture, adequately  
20 treat, and sequester as necessary all surface water or groundwater on or within their

1 land, except surface water that flows as the direct result of snowmelt or a  
2 precipitation event, so that discharges of such water do not cause or contribute to  
3 violation of any applicable water quality standards in any water resource that  
4 receives such discharge.

5 E. Issuing temporary and/or permanent injunctive relief against Defendants,  
6 ordering Defendants to cease all activities constituting the imminent and  
7 substantial endangerment to the public health and environment, and to cease all  
8 activities constituting illegal open dumping.

9 F. Issuing temporary and/or permanent injunctive relief against Defendants,  
10 ordering Defendants to design and implement a program which evaluates the actual  
11 amount of manure necessary to provide a specific crop with its anticipated nutrient  
12 needs, and to have sufficient land available, as documented in an approved  
13 Nutrient Management Plan, to handle the amount of manure produced by  
14 Defendants.

15 G. Issuing temporary and/or permanent injunctive relief against Defendants,  
16 ordering Defendants to design and implement a regular soil sampling protocol,  
17 such protocol to require sampling at one-foot intervals down to at least a four-foot  
18 depth, in order to prevent the ongoing migration of nitrate (and other pollutants  
19 including Other Contaminants) to the vadose zone and groundwater. Such soil  
20

1 sampling protocol must include soil moisture concentrations to be able to convert  
2 the soil nitrate data to concentration in the soil solution.

3 H. Issuing temporary and/or permanent injunctive relief against Defendants,  
4 ordering Defendants to design and implement a groundwater monitoring program  
5 designed to detect the transport of dairy manure nutrients and Other Contaminants  
6 into groundwater.

7 I. Issuing temporary and/or permanent injunctive relief against Defendants,  
8 ordering Defendants to supply clean, safe drinking water to residents located  
9 within at least three (3) miles of Cow Palace Dairy who rely upon well water for  
10 consumption.

11 J. Issuing temporary and/or permanent injunctive relief against Defendants,  
12 ordering Defendants to sample all surface waters running through or adjacent to  
13 Defendants' property to determine whether discharges from the Defendants'  
14 operations are impacting surface water.

15 K. Ordering Defendants to take all such actions as may be necessary to  
16 eliminate any present and future endangerment and open dumping practices,  
17 including but not limited to:

- 18 (a) funding an independent, comprehensive, scientific study to determine the  
19 precise nature and extent of the endangerment and harm caused by open  
20 dumping, including a detailed examination of the fate and transport of solid

1 waste from the facility to the waters and soils of the surrounding area, and  
2 from the water and soils to biological receptors;

3 (b) funding an independent, comprehensive, scientific study, based on the  
4 results of the study described in subparagraph (a) above, of appropriate,  
5 effective, environmentally-sound means to eliminate the endangerment and  
6 harm caused by open dumping;

7 (c) developing and implementing an appropriate and effective remediation  
8 plan, based on the studies described in subparagraphs (a) and (b) above,  
9 which will remediate the soil and groundwater contamination caused by or  
10 contributed to by Defendants' past and present manure handling, storage,  
11 and application practices at Cow Palace Dairy;

12 (d) developing and implementing manure disposal and storage techniques in  
13 accordance to the scientific studies described in subparagraphs (a) and (b)  
14 above;

15 (e) providing Plaintiffs with complete copies of records from the past twenty  
16 years concerning Defendants' soil sampling, manure sampling, groundwater  
17 sampling, lagoon construction and sampling, manure applications, third-  
18 party manure transfers, and composting operations; and

19 (f) providing Plaintiffs with complete copies of all future records created by  
20 Defendants concerning Defendants' soil sampling, manure sampling,



groundwater sampling, lagoon construction and sampling, manure applications, third-party manure transfers, and composting operations.

L. Ordering Defendants to pay Plaintiffs' reasonable attorneys' fees, expert witness fees, and costs incurred in prosecuting this action pursuant to 42 U.S.C. § 6972(e) and 28 U.S.C. § 2412(d); and

M. Ordering such other relief as the Court may deem just and proper, including pursuant to 42 U.S.C. § 6972(a)(1).

Dated: October 6, 2014.

Respectfully Submitted,

s/ Brad J. Moore

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2014, I presented the foregoing document to the Clerk of the Court for filing and uploading to the CM/ECF system, which will send notification of such filing to the following:

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